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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LUIS A. VAZQUEZ, 97A3359,

Plaintiff,

-v-

DECISION AND ORDER
04-CV-993Sr

MICHAEL P. MCGINNIS, Superintendent;
CAPTAIN SULLIVAN; JANE DOE, white female Sgt.;
GLENN GOORD, Commissioner;
DEPUTY COMMISSIONER JOHN DOE (1) -
white male - Sing Sing;
DEPUTY COMMISSIONER JOHN DOE (2) -
white male - Sing Sing;
DEPUTY COMMISSIONER JANE DOE -
white female - Sing Sing;
GRIEVANCE CLERK JOHN DOE - white male with
glasses; CASTLER, Sgt.; HANNAH, Sgt. at Southport;
MRS. HAYWORD, counselor - Southport;
MS. MRS. HESS, Counselor; MANOR, Sgt.;
MCGRAIN, Sgt. at Southport;
and SHEENAN, Captain;

Defendants.

INTRODUCTION

Plaintiff Luis A. Vazquez, an inmate of the Southport Correctional Facility, filed a *pro se* action seeking relief under 42 U.S.C. § 1983 (Docket No. 1). The complaint was screened pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(a), some of plaintiff's claims were dismissed, and plaintiff was ordered to amend his complaint on the remaining claim or face dismissal (Docket No. 5). Plaintiff claims that the defendants, New York State Department of Corrections officials and correctional officers, violated his constitutional rights, subjecting him to cruel and unusual punishment, illegal search and seizure and

violation of due process and equal protection, when his legal papers, legal books and money were withheld by defendants. For the reasons discussed below, plaintiff's complaint is dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A.

DISCUSSION

Plaintiff's claims concerning denial of his property without due process, illegal search and seizure and conspiracy were previously dismissed with prejudice for failure to state a claim. Plaintiff was allowed an opportunity to amend his claim of denial of access to the courts in order to allow the Court to determine if plaintiff could state the necessary allegations regarding that claim.

Plaintiff appears to have disregarded the Order of the Court, because he has essentially restated the initial claims, including those that were dismissed. As addressed in the Court's previous Order, plaintiff has no claim for deprivation of property without due process because he has an adequate remedy before the New York State Court of Claims to address the deprivation of his legal materials, inmate account and other property. In addition, because a prison inmate has no legitimate expectation of privacy in his cell, he has no claim for illegal search and seizure.

With regard to the one claim that plaintiff was allowed to amend, plaintiff has failed to allege any further facts with regard to his claim of denial of access to the Courts, despite the Court's explanation that a claim of failure to provide legal materials, without an allegation of a specific harm having resulted, does not state a claim for denial of access to the courts. Accordingly, because plaintiff has not made any allegation that he has been harmed in his ability to make a claim before a court, the claim for denial of access to the courts is dismissed. Because no claim remains and the complaint is dismissed in it's

entirety, plaintiff's motions for a subpoena duces tecum and change of venue are denied as moot.

CONCLUSION

_____ For the reasons set forth above, plaintiff's sole remaining claim of denial of access to the courts is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B). Plaintiff's motions for a subpoena duces tecum and change of venue are denied as moot.

ORDER

IT HEREBY IS ORDERED, that plaintiff's claim regarding denial of access to the courts is dismissed;

FURTHER, that the complaint is dismissed in its entirety and the Clerk of the Court is directed to close this case; and

FURTHER, that plaintiff's motions for a Subpoena Duces Tecum and change of venue are denied; and

FURTHER, the Clerk of the Court is directed to correct the docket to reflect the names and descriptions of the defendants as indicated in the Caption of this Order.

SO ORDERED.

Dated: May 9, 2005
Rochester, New York

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge